

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

PIMENTEL & SONS GUITAR MAKERS, INC.,
a New Mexico Corporation,

Plaintiff,

v.

Civ. No. 04-0360-BB/RLP

HECTOR PIMENTEL, an individual;
DANETTE I. L. HINKLE PIMENTEL, an
individual; and DANETTE L LOVATO-PIMENTEL
MUSIC ENTERPRISES, INC., a New
Mexico Corporation,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiff's Motion in Limine to Exclude Evidence of Defendants/Counterclaimants' Damages at trial. For the reasons set forth below, the Motion is granted.

The basis of Plaintiff's Motion is the failure of Defendants/Counterclaimants Danette I.L. Hinkle Pimentel and Danette L Lovato-Pimentel Music Enterprises, Inc. (hereinafter "the Danette Defendants") to identify any damages for trial. Plaintiff cites to the Danette Defendants' Initial Disclosures, which state:

As the case has just begun, the Pimentel Co-Defendants have not yet determined the actual amount of damages suffered as a result of the Plaintiff's actions of misappropriating the Pimentel Co-defendants' rights to the Hector Pimentel Marks.


Doc. 202, Exhibit L, page 3, ¶ 3.¹

¹ Plaintiff incorrectly attached another document to its Motion in Limine, but the Initial Disclosures were attached as Exhibit L to a Motion for Summary Judgment, Doc.

The disclosures were made on July 28, 2004 and have never been supplemented. Indeed, the Danette Defendants failed to file a response to Plaintiff's Motion in Limine. The failure of a party to file a response to a motion allows the Court to treat the Motion as unopposed. D.N.M. LR-Civ. 7.1(b). The Danette Defendants' failure to supplement their initial disclosures, as required by Fed. R. Civ. P. 26, the failure to produce any evidence of damages in almost three years, and the failure to respond to Plaintiff's Motion warrants granting Plaintiff's Motion. Accordingly, the Danette Defendants will be precluded from introducing any evidence of damages at trial.

IT IS THEREFORE ORDERED that Plaintiff's Motion in Limine to Exclude Evidence of Defendants/Counterclaimants' Damages [Doc. 218] is GRANTED.

IT IS SO ORDERED.


Bruce D. Black
United States District Judge